

**The Assessment of the Utility and Impact of Sexual Assault Evidence Collection Kits
(SAECKs) as DNA evidence in suspected cases of rape.**

by

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In

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Declaration

I hereby declare that this research study “The assessment of the utility and impact of sexual assault evidence collection kits (SAECKs) as DNA evidence in suspected cases of rape”, handed in for the qualification MPhil at the University of Cape Town, is my own independent work and that I have not previously submitted the same work for a qualification at/in another university/faculty. This work has not been reported or published prior to registration for the abovementioned degree

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A. The proposal

The assessment of the utility and impact of Sexual assault evidence collection kits (SAECKs) as DNA evidence in suspected cases of sexual assault.

1. Introduction:

According to the Sexual Offences and Related Matters Amendment Act, No. 32 of 2007, rape is defined as follows:

“Any person who unlawfully and intentionally commits any act which causes penetration to any extent whatsoever by the genital organs of that person into or beyond the anus or genital organs of another person, is guilty of the offence of rape”.

Rape is so common in South Africa it barely makes the news. Although the rapes of elderly women and babies are outlined in four-lined stories on the inside pages of local newspapers, most sexual assaults get no public attention. South Africa has one of the highest rates of rape globally, with some 65,000 rapes and other sexual assaults reported for the year ending in March 2012, or 127.6 per 100, 000 people in the country (Conway- Smith, 2013).

In Cape Town, 144 women report rape to police each day, translating into six cases reported hourly. It is extrapolated that up to 3 600 women could be raped in the country on a daily basis in South Africa (Nicholson and Jones, 2013).

In February this year, figures released by the Gauteng province’s Member of the Executive Council for Community Safety, Faith Mazibuko, showed that 23,086 rapes were reported to police in the province between 2010/2011 and the third quarter of 2012/2013. Of that number, only 55.59% were referred to the NPA for prosecution. In turn, the NPA sent 8220 (35, 61%) cases back to the police for additional investigation. At least 8870 (38,42%) cases

were thrown out of court as a result of partial investigations and only 1910 cases (about 8.2% of the total number reported in that period) resulted in successful convictions (Rademeyer, 2013).

Sexual assault evidence collection kits (SAECKs) are used to gather forensic evidence for DNA recovery after rape. Several proposals have aimed to improve services for rape survivors. Evidence collection kits for DNA recovery have undergone numerous modifications ever since their introduction in 1992. New SAECKs were first launched in 2000 and have been adapted subsequently numerous times (Jina, *et al.*, 2011).

From the time of the introduction of SAECKs, undependable reports of usage inadequacy, as well as erroneous packaging and labelling, and incomplete specimen collection (Martin, 2002) have been made.

Theoretically, the criminal justice process would involve the following: the reporting of the alleged crime to a police station, where the victim makes a statement to a police official(s) in a private or victim friendly room. Police officials examine the scene of the incident and guide the victim on how to ensure that the physical evidence of the perpetrator is kept intact until an accredited medical examiner has seen the victim. The victim is referred to a specialised family violence, child protection and sexual offences unit. If appropriate to the case, the victim may be asked to identify the offender(s) from the identification parade. This takes place in a specialised identification room where suspects are brought in for identification. Adult victims are in a viewing room separate from the suspect(s) and they will not be able to see or hear the victim, while child survivors may be brought to an observation playroom with a special observer section.

Victims are then transported to a specialised health care facility set up to deal with sexual crimes. The victim is first shown to a counselling room where staff explain the services they offer. Next the victim is seen by a nurse to assess whether the victim needs trauma medical care before continuing and if not the victim is seen by a specially trained clinical forensic medical practitioner in a consultation room. The victim may be offered anti-retroviral or other treatments depending on their specific case. If the victim chooses, he or she may go for a physical examination and collection of physical evidence in medical examination room.

Each court has one separate waiting room exclusively for adult survivors of sexual offences and one room exclusively for child survivors of sexual offences. Adult victims are asked to testify in the court room, while children and mentally handicapped survivors may testify through an intermediary from a specially equipped room that is separate from the court room (Rape Crisis Cape Town Trust, 2013).

As described above, South Africa is the country with one of the highest rate of rape in the world, yet very little studies have been done to demonstrate the significance of DNA-evidence in rape cases. This study aims to investigate just how DNA- evidence from SAECKs impacts the outcomes of rape cases.

The following review attempt to demonstrate the impact of using SAECKs as DNA-evidence in the rape cases:

One of the most comprehensive studies was conducted by Hagemann, *et al.*, (2011) to assess the impact of the medical documentation and biological trace evidence in rape cases on the legal process. This retrospective descriptive study was done by integrating police data with data from the Sexual Assault Center at St Olav's Hospital in Norway, comparing charged and non-charged cases. A total of 185 police-reported cases were identified. Charges were filed in

only 18 cases of the 101 cases examined at Sexual Assault Center. In 49 women, extra-genital injuries were documented; five were life threatening whereas in 14 women anogenital injuries were documented of which eight had multiple anogenital injuries. However, documentation of injuries was not linked with charge filing. It was also found that in only 33% of the cases, were swabs collected from women's genitals used as trace evidence by the police. This increased the probability for charge filing when used. In 4 of the 18 charged cases and in only 1 among the 54 non-charged cases, a DNA profile corresponding with the suspect was identified.

The results from this study showed that half of the women had one or more documented injury and that only one-third of the trace evidence kits collected from the women's anogenital region had been analyzed. The analysis of swabs was linked with charge filing, in spite of the outcomes of the test. Increasing the use of such medical evidence, especially in cases of stranger rape, may ensure the rights of women and increase obtainable information to the legal system.

In contrast studies conducted by Johnson, *et al.* (2012) and Peterson, *et al.* (2010) a prospective design was used to scrutinize the presence, role and impact of forensic evidence on legal outcomes for five serious offence groups, including rape. Rape cases in five US jurisdictions from the time of police incident report (during 2003) to final court disposition were followed. Their aim was to list the types of forensic evidence collected at crime scenes and identify which forms of forensic evidence contributed most commonly to successful case outcomes.

Their sample consisted of a total of 602 rape incidents. Forensic evidence was obtainable in nearly two-thirds (63.8%) of incidents. Biological and natural/synthetic materials were the most frequent types of evidence collected. On the whole, a third of incidents had evidence

submitted for examination, of which, only 18.6% were examined. Preliminary analysis showed that sexual assault cases with forensic evidence were statistically more probable to result in arrest, charge and conviction. However the proportion of arrests referred to the prosecutor was not considerably different in cases with and without forensic evidence. When the data was analysed to determine if forensic evidence predicted outcomes, it was concluded that it predicted arrest and charge but not conviction. Prosecutors were more likely to file charges when the victim had “suffered real physical harm” and when evidence in opposition to the suspect was strong. The strongest predictors of conviction were the victim’s willingness to proceed with a complaint, direct arrest techniques, and medical treatment of the victim.

Similarly in a study done by Du Mont and White (2007), they examined the relationship between forensic medical evidence and legal outcome in sexual assault cases. It involved extensive literature reviews to locate applicable studies. These were drawn from electronic databases, government and non-government organisation websites, and through key researchers and leading academics. Findings associated to the purpose of medico-legal evidence, its impact on legal outcome, and the socio-cultural factors influencing its use, were covered in the report.

They located 13 studies that particularly analysed the presence of forensic medical evidence and legal outcome. Most were based in the US or Canada. The studies had various definitions of “legal outcome”. Most included conviction within this definition, though a few defined it as “charges filed” and “trial/no trial”. In 2 of 13 studies all four categories of forensic evidence was examined (general injury; anogenital injury; biological samples; and emotional presentation), while 8 of 13 studies examined three categories (general injury; anogenital injury; and biological samples). In 2 studies, two categories were examined (general injury

and biological samples; and general injury and genital injury); and 1 study examined only the impact of genital injury on legal outcome.

It was found that the documentation of anogenital injury was linked with the filing of charges. However no study included in the review found a positive association between legal outcome and the presence of sperm, semen or saliva samples, indicating that the accessibility of this type of forensic evidence is not mandatory for a case to successfully proceed through the justice system or to obtain a conviction.

In a study by Jewkes *et al.* (2009), to describe the processing of rape cases by South African police and courts, and the association between documented injuries and DNA and case progression through the criminal justice system, data was analysed from police and court files of 1,547 cases of rape or attempted rape first reported in 2003 to a random sample of police stations in Gauteng province, South Africa. They looked for links between case data and the arrest, charge, trial, and conviction or exoneration of the alleged perpetrator. They included only cases that were closed when they collected data in 2006 and only cases that contained a record of a medical examination of the victim. The researchers applied South Africa's then legal definition of rape as "intentional and unlawful vaginal sex with woman without consent." Cases involving adults and children (aged 0–17 years) were analysed independently.

They found that generally the conviction rate was incredibly low, with only 3% of adult cases and 7.4% of children's cases resulting in a guilty ruling. Cases were dropped at each phase of the legal process and DNA evidence was frequently not collected or, if collected, not analysed. DNA reports were seldom obtainable for the courts. Injuries were not linked with arrests for either adult or children's cases; an arrest took place in 40% of cases without injuries. Child cases were more likely to come to trial if injuries were present, although a

guilty ruling was not more probable. The opposite was true in adult cases: the presence or absence of injury was not associated with cases being brought to trial, however if injuries were present, whether genital, non-genital, or both, a conviction was more probable.

The results from this study show the value of good basic medical practices in documentation of injuries, rather than more costly DNA evidence, in assisting courts in rape cases. However, the researchers do argue that in South Africa, as a middle-income country with a high percentage of non-intimate partner rapes, there would be an advantage in improving the system to collect and analyse DNA evidence rather than abandoning it completely.

These results taken together suggest that DNA evidence can assist in signifying that sexual act has transpired however it is more likely that convictions will occur if evidence of physical injury is available, as DNA evidence cannot reveal if consent was obtained or not. As stated above South Africa has one of the highest rates of rape worldwide.

2. Problem statement:

Due to the high incidence of rape and low conviction rates in South Africa, detailed studies need to be conducted on the efficiency of DNA collection and use of this evidence in the court process. Very few studies have been done on this topic in South Africa.

3. Research question:

Does the use of SAECKS as DNA evidence in rape cases result in successful convictions?

4. Hypothesis:

The conviction rate is higher in rape cases when DNA evidence along with other evidence is presented in court, in comparison to cases without DNA evidence.

5. Aim:

To investigate how DNA-evidence from SAECKs impact the ruling in rape cases.

6. Methodology:

This study will be a retrospective review of court documents, police dockets and available medical examination forms from closed cases from three courts in the Cape Town, Western Cape region between 1 January 2012 and 31 December 2012. The courts selected have separate sexual offences courts.

Data collection:

From the sexual offence courts three sources of records will be collected: court documents, South African Police Services (SAPS) dockets, which will assist in providing information that is not found in court documents and lastly other information which is not included in the SAPS dockets will also be collected, such as medical examination information.

Information regarding the details of the complainant (age, race, occupation, in the case of children, the carer), the circumstances of the rape (when it occurred, where, what the victim was doing, use of weapons, victim responses after the rape), information on the suspect (age and relationship to the victim), and the outcome of the case will be gathered from the SAPS docket and court documentation. The SAPS dockets will also be traced back as far as possible to gain medical examination information. The court documents will be used to trace back to the investigative officer and responsible police station.

Information from the medico-legal forms found in the docket will be gathered regarding whether forensic kits were utilised, sent to the laboratory, how well it was used, how

completely it was analysed and whether a report on DNA was available from the Forensic Science Laboratory. The variables will be captured.

7. Ethical Consideration:

Ethics will not be required for this study.

8. Cost Implications:

Funding will be obtained for transportation as well as for copies made of the various documents. An appeal for exemption of the cost to copy court documents will be made to the Director of Public Prosecution (Western Cape), Advocate Rodney de Kock..

9. Privacy and Confidentiality:

Anonymity and confidentiality will be maintained by omitting the names of any victims and suspects in the study. The identity of victims and suspects will not be share with any person, other than those involved in the research project.

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B. Literature review

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References:

1. Du Mont J. & White D. (2007). The uses and impacts of medico-legal evidence in sexual assault cases: A global review. Geneva, Switzerland: World Health Organization.

2. Hagemann C, Stene L, Myhre A, *et al.*, (2011). “Impact of medico-legal findings on charge filing in cases of rape in adult women.” *ActaObstetriciaetGynecologicaScandinavica*, 90(11), 1218–1224.
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4. Johnson D, Peterson J, Sommers I, *et al.*, (2012). Use of Forensic science in investigating crimes of sexual violence. *Violence Against Women*, 18(2), 193–222.
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C. Manuscript

THE ASSESSMENT OF THE UTILITY AND IMPACT OF SEXUAL ASSUALT EVIDENCE COLLECTION KITS (SAECKs) AS DNA EVIDENCE IN SUSPECTED CASES OF RAPE.

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Abstract:

South Africa has one of the highest rates of rape globally. Evidence collection kits for DNA recovery have undergone numerous modifications since their introduction in 1992. New SAECKs were first launched in 2000 and have been adapted subsequently numerous times. This study aims to investigate whether DNA- evidence is being gathered using the SAECKS, whether it is analysed and the case progression through the criminal justice system. Thirty nine cases were obtained from the Cape Town Regional and Magistrate courts, these cases were closed in 2012. Data sheets were completed from the police dockets and available medical examination forms. In 38% of the cases a SAECK was completed and sent to the laboratory. Out of 11 cases only 45.5% of DNA reports were received from the laboratory. Most of the cases in the sample were withdrawn before the criminal justice proceedings (97.4%) and only 2.6% resulted in a verdict. This study demonstrated that only in certain cases SAECKs are used and analysed. Most of the cases were withdrawn as a result of the victim's actions or non- availability rather than the outcome of the DNA analysis. As most the cases were withdrawn by way of Alternative sentence for Dispute, Reconciliation and Mediation.

Keywords: SAECK; Rape

Introduction:

South Africa has one of the highest rates of rape globally, with some 65,000 rapes and other sexual assaults reported for the year ending in March 2012, or 127.6 per 100, 000 people in the country [1]. A total of 66,387 cases of sexual offences were reported for the year ending in March 2013, or 127 per 100,000 people in the country. In the latest crime statistics, a total of 62,649 cases of sexual offences were reported for the year ending in March 2014, or 118, 2 per 100, 000 people in the country [2]. The cases of sexual offences decreased by 5.6%, according to the Medical Research Council, approximately only 1 in 9 rapes are reported to the people; therefore the exact numbers of rapes in South Africa are significantly higher than the numbers recorded by the police [3].

In Cape Town, 144 women report rape to police each day, translating into six cases reported hourly. It is extrapolated that up to 3 600 women could be raped in the country on a daily basis in South Africa [4].

In February 2013, figures released by the Gauteng province's Member of the Executive Council for Community Safety, Faith Mazibuko, showed that 23,086 rapes were reported to police in the province between 2010/2011 and the third quarter of 2012/2013. Of that number, only 55.59% were referred to the NPA (National Prosecuting Authority) for prosecution. In turn, the NPA sent 8220 (35, 61%) cases back to the police for additional investigation. At least 8870 (38,42%) cases were thrown out of court as a result of partial investigations and only 1910 cases (about 8.2% of the total number reported in that period) resulted in successful convictions [5].

According to the Sexual Offences and Related Matters Amendment Act, No. 32 of 2007, rape is defined as "Any person (A) who unlawfully and intentionally commits an act of sexual penetration with a complainant (B) without the consent of B is guilty of the offence of rape".

While Sexual assault is defined as “A person (A), who unlawfully and intentionally sexually violates a complainant (B), without the consent of B, is guilty of the offence of sexual assault.” Another way sexual assault may occur is if “a person (A), who unlawfully and intentionally inspires the belief in a complainant (B), that B will be sexually violated, is guilty of the offence of sexual assault.”

Sexual offences discussed in the Act are rape, sexual assault, sexual exploitation, sexual harassment, child pornography, incest, bestiality, and necrophilia – these include cases of compelled sexual acts, where either a third person is coerced to perform a sexual act, or an individual is coerced to perform a sexual act on themselves. ‘Sexual acts’ includes penetrative and non-penetrative sexual contact. This means any form of penetration of a person’s body by another person, object, or animal; or any physical contact or directed sexual behaviour towards an individual, by another person or persons: verbally, physically, or by means of an intermediary, or any other means [6].

The majority of women who have been sexually assaulted do not report the crime to the police and experience the lasting effects of it physically, emotionally and mentally in silence, thus extending their suffering. There are numerous reasons for the under-reporting of rape. Lack of confidence in police and the justice system, fear of repercussions from the assailant or others, dread of social shame and marginalization, fear of having to relive the trauma, horror of not being believed and the fear of being blamed for the assault [7].

Factors identified as affecting the quality of rape investigations include lack of proficiency in certain languages; a shortage of telephones or work contact details for victims and witnesses; difficulties in locating provisional addresses; a scarcity of working vehicles; and difficulties in accessing neighbourhoods without streets or lighting, especially when it is dark. The latter challenge predominantly affects survivors who lived in informal settlements with no street

names and numbers [8]. Corruption furthermore contributes to the loss of cases, with 37% of police officers claiming that one or more of their rape cases had been mismanaged due to corruption [9].

There are various types of rape that occur in South Africa, and men are also subjected to sexual violence with 3.5% of men having been forced to have sex with other men. The majority of sexual violence however, is against women [10].

South Africa has some of the highest occurrence of child and baby rape in the world [11]. In 2001, the South African Police Service reported that children are the victims of 41% of all rapes reported in the country. While there are varying numbers on the amount of reported rapes of children, one report states that in 2000, 21,538 rapes and attempted rapes of children under the age of 18 were reported [12] and another from 2001 states that there were 24,892 rapes [13]. The extensive myth in HIV riddled South Africa that having sexual intercourse with a virgin will cure a man of AIDS is a major contributory factor for the rise in the abuse of children [14]. A third of rape and sexual assault cases are committed by a family member or close relative [15].

Lesbians and transsexuals, particularly those living in townships in South Africa, also face an unsafe environment. Raping lesbians (referred to as corrective rape) is alleged to convert them to heterosexuality [16]. Around 31 lesbians have died from these attacks in the past 10 years and more than 10 lesbians per week are raped or gang-raped in Cape Town alone [17].

The biology unit of the Forensic Science Laboratory of the SAPS is responsible for the examination of evidentiary material of biological origin, (e.g. body fluids, human tissue and hair) with the aim of accomplishing the highest probable degree of human identification through forensic DNA analysis. The function of forensic biological analysis is to link an

individual's presence on a crime scene and link pertinent items, containing genetic material, connected to the crime scene or other crimes [18]. Of the cases investigated by the biology unit, around 70% comprise of sexual assault [19].

Sexual assault

Sexual assault evidence collection kits (SAECKs) are kits used by the medical examiner to gather forensic evidence for DNA recovery after rape. Several proposals have aimed to improve services for rape survivors. Evidence collection kits for DNA recovery have undergone numerous modifications since their introduction in 1992. New SAECKs were first launched in 2000 and have been adapted subsequently numerous times [20].

From the time of the introduction of SAECKs, suggestions of usage inadequacy, as well as erroneous packaging and labeling, and incomplete specimen collection [21] have been made.

The J88 form is a six-page form which details all physical injuries sustained during an assault. It is completed by a forensic nurse or medical doctor. The form includes a comprehensive questionnaire of the victim's sexual history and the details of a genital examination. Despite their sensitisation to sexual assault and rape, few women in South Africa are aware of the importance of these six pieces of paper in the prosecution of alleged rapists. This form is filled out along with the better-known SAECK [22].

DNA profiling, like eyewitness testimony, is undeniably part of the criminal investigation and essentially a benefit in any criminal docket. DNA evidence assists the investigating officer and prosecutor with imperative information regarding the identity of the offender, thus solving the question as to "who" committed the crime [23, 24].

It is imperative for legal practitioners to understand the science of DNA, both the basic foundations and the recent advances, and to be familiar with the valid justifications for disputing the influence of DNA evidence in criminal proceedings [25].

Theoretically, the criminal justice process would involve the following: the reporting of the alleged crime to a police station, where the victim makes a statement to a police official(s) in a private or victim friendly room. Police officials examine the scene of the incident and guide the victim on how to ensure that the physical evidence of the perpetrator is kept intact until an accredited medical examiner has seen the victim. The victim is referred to a specialised family violence, child protection and sexual offences unit. If appropriate to the case, the victim may be asked to identify the offender(s) from the identification parade. This takes place in a specialised identification room where suspects are brought in for identification. Adult victims are in a viewing room separate from the suspect(s) and they will not be able to see or hear the victim, while child survivors may be brought to an observation playroom with a special observer section.

Victims are then transported to a specialised health care facility specifically geared towards dealing with sexual crimes. The victim is first shown to a counselling room where staff explain the services they offer. Next the victim is seen by a nurse to assess whether the victim needs trauma medical care before continuing and if not the victim is seen by a specially trained clinical forensic medical practitioner in a consultation room. The victim may be offered anti-retroviral or other treatments depending on their specific case. Victims are asked to sign an SAPS 308 form to say they agree, or give their consent to be physically examined. The examination is to find physical proof of what happened and is an opportunity to obtain the rapist's DNA on the victim's body, which can then link the rapist to the crime and subsequent conviction.

After a suspect has been arrested, the investigating officer investigates the rape complaint to see if she or he can gather enough evidence for a court case or prosecution to proceed. The medical evidence is taken to the forensic laboratory for analysis and the results are added to the docket or case file. Any witnesses, including the first person the victim confided in about the alleged rape or any person, who may have witness the alleged crime, is interviewed by the police and gives their statements to the police. The case then goes to the public prosecutor, who will weigh up the evidence and decide whether to prosecute. The prosecutor may also decide whether the case requires further investigation or additional evidence before a more informed decision is made. If it's decided that the matter will not go to court, it may simply mean there is not enough evidence to obtain a conviction [26].

In South Africa the civil and criminal courts are responsible for the management of justice. The court structure is hierarchal, comprising of lower and higher courts, which are clustered into district and regional magistrates' courts, the provincial divisions of the High Court, and the Supreme Court of Appeal. The Constitutional Court is the highest court for constitutional matters. Specialist courts have been established for various matters, including Sexual Offences courts. The Magistrates' Courts are the lower courts which deal with the less serious criminal and civil cases. They are divided into regional courts and district courts. The Regional Magistrates' Courts deal with more serious cases than the ordinary Magistrates' Courts - for example, murder, rape, armed robbery and serious assault. The district courts try the less serious cases. They cannot try cases of murder, treason, rape, terrorism, or sabotage. High Courts listen to any case which is too serious for the Magistrate's Court or when a person or organization goes to the court to change a decision of a Magistrate's Court, which means appealing a case. The Supreme Court of Appeal is the highest court in South Africa and it only deals with cases sent to it from the High Court. The Constitutional Court only makes decisions about issues that have to do with the Constitution. It

is also the highest court in the land since its decisions cannot be altered by any other court. As part of responding to the problem of sexual offences, special sexual offences courts are set up across the country [27].

Each court has one separate waiting room exclusively for adult survivors of sexual offences and one room exclusively for child survivors of sexual offences. Adult victims are asked to testify in the court room, while children and mentally handicapped survivors may testify through an intermediary from a specially equipped room that is separate from the court room [26].

As described above, South Africa is the country with one of the highest rates of rape in the world, yet few studies have demonstrated the significance of DNA- evidence and its usefulness in the arrest and conviction in rape cases. This study aims to investigate whether DNA- evidence is being gathered using the SAECKS, whether it is analysed and presented in court. Moreover, how DNA evidence from SAECKS impacts the outcome of rape cases brought before the courts.

Methodology:

Data collection

Cases closed during the calendar year of 2012 were selected, this year was selected as it was current enough to supply a comparatively accurate reflection of the current implementation of the criminal justice system as well as to ensure that majority of cases were complete by the time the research was conducted. Thirty nine cases were obtained from court records from both the Cape Town Regional Court as well as the Cape Town Magistrate court. Most of the court documents were obtained from the Regional court as very limited Forensic information could be gather from the Magistrate court records.

To be eligible for inclusion in the study, the cases had to be closed between 00h00 on 1 January 2012 and 23h59 on 31 December 2012 at the courts selected.

In this study three data capturing instruments were used. The first recorded information about cases that went before court. Information regarding the outcome and reasons for withdrawals at court were collected.

The second data capturing instrument recorded information from police dockets. The dockets consist of witness statements, police investigation diary, the J88 on which the medical examination and its findings are documented and any reports, including those from the Forensic Science Laboratory if available. The data extracted from the police dockets included the details of the complainant (age, race, occupation, in the case of children the primary caregiver), the circumstances of the rape (when it occurred, where, what the victim was doing, use of weapons, victim responses after the rape), details of the suspect (age, relationship to victim, previous convictions, type of conviction), and on the case outcome. Details gathered from medical-legal forms included whether a J88 was completed and if a SAECK was used, if so unique number of that SAECK. Information on whether the SAECK was sent to the lab was also gathered.

The third data capturing instrument was medical- legal forms tracked back to the Forensic Science Laboratory. Information was gathered regarding whether the suspect's blood was drawn and if a report is available from the laboratory.

Cases were reported at eleven of the police stations which fall under the jurisdiction of the Cape Town magistrate and regional courts.

Not every case had J88s, as it may not have been filled out as it was not pertinent to do so.

Data analysis

The analysis was undertaken using Stata 10 [28] and the svy commands of Stata were used. The distribution of the variables were described for the whole sample and across the victim age groups under 12, at this age victims are not mature enough to consent to and understand when a sexual offence is being committed against them , under 18 and over 18 by calculating the frequencies and the means where appropriate.

Confidentiality was maintained by excluding names and identification numbers in the study. Cas numbers, which is a reference number given to the complainant when a case is registered in the SAPS Crime Administration system (CAS) , were used instead to track the cases from the court documents to police dockets. All data sheets were securely stored away and access was only limited to people conducting the research. No attempt was made contact either the victim or suspect.

Results

A total of 39 individual victims' dockets were included in the sample. Overall, 56.4% (n= 22) of our sample experienced a complete rape involving an act of penetration. The remaining 43.6 %(n= 17) reported an attempted rape, or a suspected sexual assault.

Victim and accused: social and demographic characteristics

Victims' age and race

Analysis showed that victims ranged from 9 years to 40years in age, with the median age being 20 years (mean 21, 2). The majority of victims in the sample comprised of women aged 18 and older (62.5%). In the case of incidents involving victims under 18 years old, adolescent girls faced a greater risk, with 30% of victims being between the ages of 12-17. Children under the age of 12 accounted for 7.5% of incidents. Table 1 represents victims'

race by age group. There were considerable differences between racial groups in proportion of the victims in each group, victims' in the age groups of under 12 and over 18 comprised mostly of Africans, whereas most of the victims were coloured in the age group of 12-17 years (58.3%). African women were at a greater risk as the reported 52.5% of incidents, whereas white women appeared to be at lower risk as only 2.5% reported incidents in our sample.

Primary caregiver of child victims

Information regarding who the child victim was staying with at the time of the incident was extracted from police dockets. Analysis show that majority of victims were staying with their biological mothers at the time of the incident (53.3%), of which 66, 7% where under 12 and 50% over 12. Victims living with biological parents comprised of 40%, of which 33.3% were under 12 and 41.7% over 12 and only 6.7% were living with other relatives (Table 2).

Accused age

Age distribution of the accused in the sample is over a wide range. The youngest accused was 17 and the oldest 60 years old, with the median age being 29 years and mean age 32, 9.

Previous convictions

Most of the accused in our sample were first time offenders (70.7%), whereas 26.8% had previous convictions, of which only 2.4% was for rape, as represented by the results in Table 3.

Factors and circumstances associated with incidents of rape and sexual assault

Victim-accused relationship

In majority of the cases (Table 4) the accused was known by the victim (27.5%), whereas only 12.5% of the accused were strangers and 10% were current or ex-intimate partners. It was more likely for relatives to be the accused in cases of girls under the age of 18 as opposed to adults.

The location of the incidents

In the sample most of the incidents occurred in a home (Table 4), the majority occurring at another residence (25%). In the case of children under 12, most incidences occurred at home (66.7%), while adolescents were greater risk at home and at the home of the accused. Adults were at greater risk when at another residence (28%) and at the accused home (24%). In “Other” locations such as the victim’s or accused workplace, incidences occurred in 12.5% of cases, whereas less of the incidents occurred in a health facility, transportation modes such as cars, trains and buses; or roadways or alleys, accounting for 2.5% of the cases, respectively.

Circumstances of the incidence

The distribution of the circumstances surrounding the incidents were recorded and analysed. The most common occurrence of the incidence of children under 12(66.7%) and adults (24%) resulted when the victim was sleeping. In the case of adolescents, they were abducted or lured away in 33.3% of the cases. Similarly adults were at risk when at the accused house (20%). “Other” circumstances such as: receiving lesson from the accused, being at accused workplace, being held against will, also contributed to the likelihood of occurrence of incidence of adolescents (25%) and adults (16%). Statutory rape occurred in 8.33% of the cases involving adolescents (Table 4).

Perpetrators use of weapons, threats and coercion

A variety of items are used to threaten or coerce victims. Amongst these are firearms, bodily force, threats of physical harm, abuse of power, false pretenses. In 50% of the cases, the use of a body part was involved in all three age groups. In 27.5% of cases, the accused used their hands (Table 4).

Victims' actions after incident

The type of action by the victim after the incidents relate to age or level of maturity. Majority of the victims that were adolescents (33.3%) and adult (36%) first told a family member or friend immediately after the incident before reporting to the police, while 16.7% of adolescents and 20% of adults fled the scene immediately afterward. Only 15% of our sample sought help or immediately reported the incident. While Children under the age of 12, fell asleep or remained in place (66.7%). Reporting of the incident to the police a day or more after the incident occurred in 15% of the cases (Table 4).

The collection of medico-legal evidence

The J88 form was available in 64.1% of the cases. Only in 30.8% of cases a SAECK was completed and sent to the laboratory. The suspect's blood was only drawn in 10.3% of those cases. All the reports were available at the laboratory, however only 45.5% out of the 11 cases of the DNA reports were received from the forensic laboratory. The DNA analyses were completed within a month to 3 months. SAECKs were completed in only 25% of adults, 33.3% of young children and 41.7% of adolescents (Table 5).

Matters referred to court

Withdrawing or striking matters from the court roll/case outcomes

Most of the cases in our sample were withdrawn (97.4%), whereas only 2.6% resulted in a verdict. Matters resolved between the victims and accused or families resulted to 28.2% of

the cases being withdrawn. Victims being untraceable/ dying (23, 1%) and withdrawing (20.5%) resulted in the case being withdrawn from court. The “other” refers to cases where the victim was a minor and a parent (10.5%) withdrew. In 5.1% of the cases, the accused disappeared or died (Table 6).

Victims’ engagement with the criminal justice system

A total of 84.6% of the victims discontinued their criminal cases. Of 30.3% withdrew because they resolved matters by way of Alternative sentence for Dispute, Reconciliation and Mediation (ADRM). Most of victims withdrew as they found proceedings too distressing or disruptive of their lives (30.3%). At the stage of criminal justice proceedings, 33.3% of victims were untraceable or died. The “other” refers to cases where the victim was a minor and a parent (6.1%) withdrew (Table 7).

Discussion:

The sample population revealed that adult victims represented 62.5% of cases reported to the Cape Town Regional and Magistrate court in 2012. The trend is ‘normal’, as victims tend to be aged 16-25 though sexual violence occurs in all age groups, given national trends [29]. Victims under 18 were more likely to be living with their biological mother at the time of the incident, in the South African context, poor and neglectful parenting may be, however, a result of poverty with parents at times having to leave their children for extended periods to secure employment and generate income to support the family. Thus, mothers, being the primary caregiver in our study, would likely have to go out and work leaving their children unsupervised or in the care of someone else, making them vulnerable to being victims of sexual violence [30].

Victims were more likely to experience sexual violence by someone they know; this was noted across all the age groups in the study, whereas adults are more likely to experience sexual violence from strangers than younger victims (16% versus 8.3%). Many girls and women believe that if they acquainted with the person or if it is an intimate partner who rapes them, they cannot refuse sex, even forcible sex [31].

Cultural practices influence boys from an early age about the traditional patriarchal thinking of masculinity, which promote and legitimize disparate gendered power relations. Linked to these patriarchal ideological beliefs are rape mythologies, used to rationalize and validate sexual abuse. Women and girls are held responsible for controlling the sexual desires of boys and men as there is a strong belief that they are incapable of controlling them. It follows that if a girl wears clothing that shows off her body, or walks about at night, she is asking to be raped. Sexual violence is further understood as a strategy used to put girls/women who became too independent and self-assured in their place [30]. The high standing of men, with respect to particularly girl children, leads to defenselessness through reducing girls' capability to refuse sexual advances and generating expectations in men that they should have power over women and children [32].

Perpetrators' who often know the child victim, have gained the trust of the child, making it easier to access the child through caretaking, such as babysitting; targeting the child/ children by luring them with bribes, gifts and games, using force, anger, threats and bribes to make sure of their continuing obedience; and methodically through touch, talk about sex and persuasion [33]. A large number of adult victims and children under the age of 12 were attacked opportunistically in the course of routine activities, such as sleeping. Due to poverty women are forced to perform an array of daily practices in ways which put them at jeopardy. In areas lacking proper housing infrastructure, such as lack of piped water, easy sources of fuel and electricity place women on a daily basis at risk of rape during the course of

collecting resources for everyday living. Drinking alcohol also increases the danger of women being raped, most likely because it diminishes their ability to interpret and act on caution signs and to effectively protect themselves [34].

In 67.5% of the cases, these incidents took place at a residence of one kind or another. The men act on a sense of sexual entitlement; therefore it's found that more sexual violence occurred at the accused home than that of the victims. Even if the men did comprehend the wrongfulness of their actions, it suggests that such men feel empowered to act with a sense of evident immunity [35].

Most of the accused used their body part (50 %) in this study as opposed to using a weapon, only 4% of the cases involved the use of a firearm as a weapon. According to the Groth typology, a weapon is often used to coerce a victim in order to control them, in the cases of accused using their body part, they may have felt that they asserted enough of their capability or the victim was incapacitated; therefore they may have felt no need to use a weapon [36].

Many victims only reported incidents after first telling a family member or friend. Most rape myths lay the fault or responsibility at the door of the victim, by suggesting that her actions somehow led the rapist to rape her. This can result in victims delaying the reporting of the incident, as rape victims undergo feelings of guilt, or dread of facing the blame of their community or family [37].

Alternative sentence for Dispute, Reconciliation and Mediation (ADRM) also known as Alternative Dispute Resolution (ADR), provides an opportunity to resolve disputes and conflict through the utilisation of a process that is appropriate for a particular dispute or conflict. The goals of ADRM are to alleviate court congestion, as well as prevent undue cost and delay, and improve community involvement in the dispute resolution process. It also aims to provide more effective dispute resolution [38]. If mediation results in no agreement,

or if no mediation is held at all, the matter is referred back to court to be dealt with in the usual manner. Cases that have been inappropriately referred to for mediation can also be sent back to court [39].

Most of the cases were withdrawn as a result of the victim withdrawing the matter (20.5%), the matter being resolved by way of Alternative sentence for Dispute, Reconciliation and Mediation (28.2%) and the victim becoming untraceable or dying (23.1%) as seen in Table 6. The considerable amount of victims opting out of the criminal justice process could be an indication that the victims do not deem pursuing a complaint to be in their best interest [35].

Reasons for victims withdrawing could be that the criminal justice process is alleged to be slow and time consuming. Complainants often have to stay out of work and the expense of time and money spent on travelling to court are too much of an inconvenience for them to endure. Several complainants are dissuaded by the lengthy delays and frequent postponements of courts that are overburdened or the complainant has no interest in the case. In mediation, the perpetrator asked for absolution or because the suspect is the victim's spouse, intimate partner or they work together. The matter was resolved by the family or elders. Fundamentally, the matter has been resolved and an alternative resolution found, this is very common in fairly small communities where everybody knows each other. In terms of poverty, people live and aspire to uphold harmonious relations in the community. This begs the question as to why the victim accepts such propositions as the imperative is evidently on the side of the perpetrator. This is associated to the intimacy between the perpetrator and the victim and the closeness of the community [40].

The lack of DNA reporting available in the police dockets as well as the lack of collection of the suspect's blood, seriously impedes the primary objective of this study, which was to investigate just how DNA- evidence from SAECKs impacts the outcomes of rape cases.

However, the availability of a DNA report made no disparity to the possibility of a conviction. As the suspect's blood was seldom collected by the investigating officer, comparisons against any DNA identified by the laboratory could not be made. This important procedure is underlined in the case of *S v Orrie and Another* 2004 (1) SACR 162 (C), the state applied, by way of a notice of motion and founding affidavit for an order in terms of section 37(1)(c) of the Criminal Procedure Act, 1977 read with subsections (2)(a) and (b), that the investigating officer is authorized, in conjunction with a medical officer or a district surgeon, to take a blood sample of each of the accused "in order to ascertain whether such sample(s) has any mark, characteristic or distinguishing feature by means of DNA analysis".

Majority of the cases in this study were withdrawn at the stage of the criminal justice proceedings, even though DNA evidence was analysed by the laboratory. This evidence wasn't used to assist the criminal justice process as the cases were withdrawn for reasons other than the outcome of the DNA evidence, as previously discussed. Since then the second Criminal Law (Forensic Procedures) Amendment Act No. 37 of 2013 (the "DNA Act") has been approved.

This Act provides for the expansion, regulation and administration of a national DNA database known as the National Forensic DNA Database of South Africa (NFDD). It also provides for the use of forensic DNA profiles in the investigation of crime and the use of such profiles in proving the innocence or guilt of persons before or during a prosecution or the exoneration of convicted persons. The DNA Act makes it compulsory for specially trained police officers to take DNA samples from suspects at the time of arrest for Schedule 8 offences, which range from rape and murder to burglary and it authorizes that all convicted offenders DNA samples are taken retrospectively and prior to their release from prison. Specially trained Police Officers will be allowed to take non intimate DNA samples from

arrestees and convicted offenders; this ensures that a sample is quickly and easily uplifted. The “invasiveness” of the methods of acquiring DNA samples (rubbing a swab around the person’s mouth, or obtaining a drop or two of blood from a pin-prick to a finger), are equivalent to having a breathalyser taken on suspicion of drunken driving. The DNA profiles are stored on the DNA Database, namely by using markers from the non-coded regions of a person’s DNA. This method ensures that no genetic disposition or other distinctive characteristic may be read from that profile other than gender. The retention of the profile, in that form, is the same as a fingerprint, and therefore its retention does not impact on the privacy of the individual in any way.

The NFDD comprises six indices containing forensic DNA profiles, namely a Crime Scene Index, an Arrestee Index, a Convicted Offender index, an Investigative Index, an Elimination Index and a Missing Persons and Unidentified Human Remains Index. Various retention frameworks apply to each the six different indices. The Crime Scene Index contains forensic DNA profiles obtained from all crime scene samples, such as biological evidence collected from crime scenes, which will be held on the NFDD for an indefinite period. The Arrestee Index and Convicted Offender Index contain forensic DNA profiles of all persons arrested or convicted, as the case may be, of a Schedule 8 offence. Forensic DNA Profiles entered into the Arrestee Index will either be transferred to the Convicted Offender Index upon conviction, where they will be held indefinitely, or removed within three years if the arrest does not result in a conviction. Most of the cases in this study were withdrawn therefore DNA profiles were not retained, as none of the suspects were convicted.

However if the cases in the study were brought before court the contribution of DNA evidence is significant as demonstrated in the case of *Mudau v The State* (764/12) [2012] ZASCA 56, in this case the accused was convicted of raping his 13 year old niece based on DNA evidence found on the victim’s underwear. A DNA analysis was done of both semen

found on the piece of the panty and the appellant's blood sample and it was concluded that there was a match in the DNA results. The outcome was therefore that the forensic evidence showed that the appellant's semen was found on the child's panties. In his testimony the appellant denied that he raped the child, but when the evidence was assessed in its entirety, as a court is obliged to do, the conclusion is undeniable that, even absent any conclusive medical evidence which must be regarded as being neutral, the child's evidence, supported by the DNA evidence and by the appellant's failure to provide any account whatsoever for the presence of his semen on the complainant's panties, constitute sufficient evidence of the rape. The trial court therefore convicted the appellant.

Similarly, in the case of *Mokoena v S* (A323/ 2010) [2012] ZAFSHC 12, the appellant was tried as accused number one, he and his co-accused pleaded not guilty to a charge of rape. In spite of their plea, both of them were found guilty. The appellant was positively connected to the victim's rape through the DNA evidence. He then made a formal admission.

Another example of the impact of DNA evidence in suspected rape cases is demonstrated in the case of *S v Nyembe* (JPV 2011/250) [2013] ZAGPJHC 126; 2014 (1) SACR 105, the accused had been arraigned for trial on an indictment consisting of altogether 14 counts, of which 6 was for rape. The accused pleaded not guilty on all counts and elected not to tender a plea explanation. The crucial evidence for the state concerned the DNA testing, analysis and the results obtained. The forensic expert at the forensic science laboratory testified on those aspects. The conclusion she arrived at was that the accused DNA results obtained from a blood sample matches the DNA results from all three complainants. Upon consideration of the totality of the facts in the matter the DNA results obtained, in the judges view, was corroborated by the similar fact evidence of the three incidents in the course of which similar offences were committed, within a time span of less than three months, in the same area, at the same time, by one man. The accused was found guilty of all charges.

DNA evidence is not only used to verify that the person committed the crime, but can also be used to exonerate those who have been wrongfully convicted; this is demonstrated by a case in Australia. In this case the accused, who served 10 months of a 7- year sentence for the rape of a 13 year old girl in Queensland in 1999, before having his conviction overturned by the Queensland court of appeal. The girl originally denied knowing the rapist and provided a description of the man to the police. She then changed her initial statement and nominated the accused as the rapist. DNA evidence was not used in the trial. A rape kit was prepared and vaginal swabs obtained from the rape victim had revealed the presence of spermatozoa, but testing failed to yield an irrefutable DNA profile. Sheets and pillowcases from the victim's bed were also sent to the lab but were not tested at all. The accused was convicted and sentenced to seven years imprisonment; he then lodged an appeal that raised the lack of scientific evidence in his case. Only then did the lab test the bedding from the girl's room. A semen stain was discovered on the complainant's bed sheet and it revealed a DNA profile, but the profile did not match the accused. The lab tested the vaginal swabs again and found a male DNA profile. This profile was run through the Queensland convicted offender database and matched the DNA profile of a convicted rapist who met the victim's preliminary description of the offender and lived in the same community [41].

In another example, in America, a man named Darryl Hunt was charged with the murder and rape of a local copy editor. No physical evidence linked Hunt to the crime, but there were claims made by witnesses placing him in close proximity to the crime scene. He was convicted and sentenced to life imprisonment. In 1994, DNA testing cleared Hunt of any sexual assault, and because sexual assault was at the heart of the murder cases, the murder charges were then in question. Finally, in 2004, after 19 years after Hunt was convicted and 10 years after he was first excluded by DNA, the DNA profile from the scene was run in the state database. The results matched a man imprisoned for another murder [42].

Though fairly new in South Africa, the Innocent Projects has resulted in the exoneration of at least six men. The six men were arrested and consequently spend three months in jail, after being accused of the brutally assault and ferocious rape of a young girl in the small town of Louisvale in the Northern Cape. Her injuries were so extensive that gang rape was assumed. The public prosecutor dealing with the case called for DNA analysis to be used to aid in the investigation. First, samples were taken from the crime scene, which in this case was the young girl herself. DNA samples were called from her clothing and body, which were sent to the forensic science laboratory's DNA unit for analysis. DNA reference samples were also taken from the six suspects and sent to the same laboratory for analysis to determine whether the DNA profiles of these six men matched those analysed from the samples taken from the victim. The DNA results however revealed that only one rapist was responsible for the horrific attack and that none of the six accused men had a DNA profile that matched that of the real perpetrator. Based on these results, the six men who had been falsely accused men were instantaneously released and exonerated of the crime. A former boyfriend of the young girl's mother was consequently arrested and a DNA reference sample was taken from him and sent to the DNA laboratory for analysis. The DNA results showed an exact DNA match with the rapist. As a result he was sentenced to life imprisonment [43].

Conclusion:

This study demonstrated that only in certain cases SAECKs are used and analysed. Most of the cases were withdrawn during the criminal justice proceedings as a result of the victim's actions or non- availability rather than the outcome of the DNA analysis. As the cases were withdrawn before the DNA analysis results could be brought before court, the impact of DNA- evidence on the outcome of suspected rape cases cannot be validated or invalidated. This study is however a pilot study intended to lay the groundwork for a more completed

study in the future. Based on the outcome of various case laws from a South African context as well as abroad, it can be corroborated that DNA can be used to link a suspect to a crime but also eliminate those that are wrongfully accused.

As most of the cases were withdrawn by way of ADRM, the consequence of this formal process is that perpetrators are able to persist committing crimes continuously secure in the knowledge that they will certainly not be punished by the courts while victims will carry on living in fear, feel insecure and lack confidence in the agencies of the criminal justice system [40]. The Children's Act 38 of 2005, encourages the use of mediation in matters involving children, however this does not compensate for the long term emotional and physical effects endured by child victims. This form of alternative resolution also raises the question of why the State prosecutors do not continue a case against the accused as sexual penetration and sexual violation by adults with children between the ages of 12 and 16 years, despite their consent is against the law, according the Criminal Law (Sexual Offences and Related Matters) Amendment Act (32 of 2007). A sexual offence referred to for mediation can therefore never serve the best interest of a child [44]. It is recommended that this alternative resolution procedure should be explored some more especially when the victim is a minor. The forensic laboratory should also be informed when cases are withdrawn as this prevents wastage of resources.

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Legislation: South Africa

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Criminal Procedure Act (51 of 1977)

Criminal Law (Forensic Procedures) Amendment Act No. 37 of 2013 (the “DNA Act”)

Criminal Law (Sexual Offences and Related Matters) Amendment Act (32 of 2007)

Case law: South Africa

S v Orrie and Another 2004 (1) SACR 162

Mudau v The State (764/12) [2012] ZASCA 56

Mokoena v S (A323/ 2010) [2012] ZAFSHC 12

S v Nyembe (JPV 2011/250) [2013] ZAGPJHC 126; 2014 (1) SACR 105

Tables:

Table 1: Distribution of race of victims, by victim's age group

Race	Under 12 n=3	Under 18 n=12	Over 18 n=25	Total n=40
African	3(100%)	5(41.7%)	13(52%)	21 (52.5%)
Coloured	0(0%)	7(58.3%)	11(44%)	18(45%)
White	0(0%)	0(0%)	1(4%)	1(2.5%)

Table 2: Distribution of the primary caregiver of the child at the time of the incident

Primary caregiver	Under 12 n=3	Under 18 n=12	Total n=15
Biological mother	2(66.7%)	6(50%)	8 (53.3%)
Biological parents	1(33.3%)	5(41.7%)	6 (40%)
Other relative	0(0%)	1(8.3%)	1(6.7%)

Table 3: Proportion of accused with previous convictions and the nature of the conviction

	Total n=41
Any previous convictions	11(26.8%)
Previous conviction for rape	1(2.4%)
Previous convictions for other crimes and more than one conviction	10(24.4%)
Unknown	1(2.4%)
None	29(70.7%)

Table 4: Characteristics of the factors and circumstances associated with incidents of rape and sexual assault

Characteristics	Under12 n=3	Under18 n=12	Over18 n=25	Total n=40
Friend/acquaintance/neighbor	2(66.7%)	7(58.3%)	18(72%)	27(67.5%)
Current /ex-intimate partner	0(0%)	1(8.3%)	3(12%)	4(10%)
Strangers/ known by sight	0(0%)	1(8.3%)	4(16%)	5(12.5%)
Relatives	1(33.3%)	3(25%)	0(0%)	4(10%)
Victim's home	2(66.7%)	3 (25%)	3(12%)	8 (20%)
accused home	0 (0%)	3(25%)	6(24%)	9(22.5%)
Another residence	1(33.3%)	2(16.7%)	7(28%)	10(25%)
Health facility	0(0%)	1(8.3%)	0(0%)	1(2.5%)
Other	0(0%)	0(0%)	5(20%)	5(12.5%)
Statutory raped	0(0%)	1(8.3%)	0(0%)	1(2.5%)
Victim was child and abducted/ lured away	0(0%)	4(33.3%)	0(0%)	4(10%)
Other	0(0%)	3(25%)	4(16%)	7(17.5%)
Victim was asleep	2(66.7%)	1(8.3%)	6(24%)	9(22.5%)
Body part	2(66.7%)	6(50%)	12(48%)	20(50%)
Hands	0(0%)	5(41.7%)	6(24%)	11(27.5%)
Victim fell asleep or remained in place	2(66.7%)	0(0%)	1(4%)	3(7.5%)
Victim fled the scene	0(0%)	2(16.7%)	5(20%)	7(17.5%)
Reported to police after 1 day	0(0%)	2(16.7%)	4(16%)	6(15%)

or more

First told family member or	1(33.3%)	4(33.3%)	9(36%)	14(35%)
friend afterward				

Table 5: Attrition in medico-legal evidence, by victim age

	Under 12 n=3	Under18 n=12	Over 18 n=24	Total n=39
Opening case	3	12	24	39
J88 completed and available	2(66.7%)	7(58.3%)	16(66.7%)	25(64.1%)
Forensic kit completed	1(33.3%)	5(41.7%)	6(25%)	12 (30.8%)
Suspect's blood drawn	0(0%)	1(8.3%)	2(8.3%)	3(7.7%)
Forensic specimens sent to lab	1(33.3%)	4(33.3%)	6(25%)	11(28.2.8%)
Report from forensic lab	0(0%)	1(8.33%)	4(16.7%)	5(12.8%)

Table 6: Reason for matters being withdrawn or struck from the roll/case outcome

Reasons	Under 12 n=3	Under18 N=12	Over 18 N=24	Total N=39
Victim withdraws the matter	1(33.3%)	1(8.3%)	6(25%)	8(20.5%)
Matter withdrawn by public prosecutor provisionally	0(0%)	2(16.7%)	2(8.3%)	4(10.3%)
Matters resolved between victim and accused or families	1(33.3%)	2(16.7%)	8(33.3%)	11(28.2%)
Victim becomes untraceable/ dies	1(33.3%)	3(25%)	5(20.8%)	9(23.1%)
Accused disappears/ dies	0(0%)	0(0%)	2(8.3%)	2(5.1%)
Other	0(0%)	4(33.3%)	0(0%)	4(10.5%)
Total of cases withdrawn				38(97.4%)
Not guilty verdict	0(0%)	0(0%)	1(4.2%)	1(2.6%)

Table 7: Proportion of cases where victim's actions or non- availability resulted in cases being closed

Detail of victim actions	Total n=33(84.6%)
Victim becomes untraceable/ dies	11(33.3%)
Matters resolved between victim and accused or families	10(30.3%)
Victim withdraws the matter	10(30.3%)
Other	2(6.1%)

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Web references

Refrain from using *online references* if possible. When referring to internet sources, for example Wikipedia, please state so clearly, and indicate if this information can be checked and on which date you visited this online source.

Reference style

Text: Indicate references by superscript numbers in the text. The actual authors can be referred to, but the reference number(s) must always be given.

List: Number the references in the list in the order in which they appear in the text.

Examples:

Reference to a journal publication:

1. Van der Geer J, Hanraads JAJ, Lupton RA. The art of writing a scientific article. *J Sci Commun* 2010; **163**:51–9.

Reference to a book:

2. Strunk Jr W, White EB. *The elements of style*. 4th ed. New York: Longman; 2000.

Reference to a chapter in an edited book:

3. Mettam GR, Adams LB. How to prepare an electronic version of your article. In: Jones BS, Smith RZ, editors. *Introduction to the electronic age*, New York: E-Publishing Inc; 2009, p. 281–304.

Note shortened form for last page number. e.g., 51–9, and that for more than 6 authors the first 6 should be listed followed by 'et al.' For further details you are referred to 'Uniform Requirements for Manuscripts submitted to Biomedical Journals' (J Am Med Assoc 1997; **277**:927–34) (see also http://www.nlm.nih.gov/bsd/uniform_requirements.html).

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All necessary files have been uploaded, and contain:

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Further considerations

- Manuscript has been 'spell-checked' and 'grammar-checked'
- References are in the correct format for this journal
- All references mentioned in the Reference list are cited in the text, and vice versa
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Therefore, it is an ideal medium for citing a document, particularly 'Articles in press' because they have not yet received their full bibliographic information. Example of a correctly given DOI (in URL format; here an article in the journal *Physics Letters*

B): <http://dx.doi.org/10.1016/j.physletb.2010.09.059>

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D. Appendix

Acknowledgements

I would like to thank the NRF for funding, Magistrate Ingrid Arnsten, the court manager and staff at the Cape Town Magistrate court. The South African Police Services for their assistance.

I would also like to thank my family and friends for support, guidance and encouragement. I would also like to thank them for showing interest in my project.

Last, but not least, thank you to my supervisor Dr Heyns for her guidance, expertise and encouragement.

Appendix 1: Letter of permission to conduct research

South African Police Service



Suid-Afrikaanse Polisie

Privaatsak Private Bag	X9004 CAPE TOWN	Faks No. Fax No.	021 417-7416
Your reference/My verwysing: My reference/My verwysing:	25/7/21(201400104)	THE PROVINCIAL COMMISSIONER DIE PROVINSIALE KOMMISSARIS	
Enquiries/Navrae:	Col Douse SAC Hoko	WESTERN CAPE / WES-KAAP	
Tel:	021- 4177105/7529	8000	

Station Commanders

SAPS Langa, Wynberg, Kensington
Maitland, Woodstock, Camps Bay
Sea Point, Cape Town Central
Table Bay Harbour, Table View, Milnerton
South African Police Service
Western Cape

**THE ASSESSMENT OF THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE
COLLECTION KITS (SAECKs) DNA EVIDENCE IN SUSPECTED CASES OF RAPE
MASTERS DEGREE: UNIVERSITY OF CAPE TOWN (UCT)
RESEARCHER: MS D CUPIDO**

1. Ms D Cupido currently doing her Masters in Biomedical Forensic Science at University of Cape Town (UCT), in the Department of Forensic medicine, aim to investigate how DNA evidence from Sexual Assault Evidence Collection Kits(SAECKs) impacts the ruling in rape cases, which was approved by the Provincial Commissioner.
2. Please find attached the approved documents together with the indemnity, condition and undertaking signed by the researcher for your information.
3. As per information note approved by the Provincial Commissioner, Ms D Cupido will conduct her research at your relevant stations and we request your assistance in this regard.
4. Your contact details will be forwarded to the researcher and she will be in contact with your office in due course.
5. Please acknowledge receipt of this letter and forward it back to our office.

**THE ASSESSMENT OF THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE
COLLECTION KITS (SAECKs) DNA EVIDENCE IN SUSPECTED CASES OF RAPE
MASTERS DEGREE: UNIVERSITY OF CAPE TOWN (UCT)
RESEARCHER: MS D CUPIDO**

Thanking you in anticipation


..... BRIGADIER
PROVINCIAL HEAD: OD AND STRATEGIC MANAGEMENT
WESTERN CAPE
HD HEILBRON

DATE: 2014/08/ .




INFORMATION NOTE

REF NO : 25/7/2/1(201400104)
DATE : 24 July 2014
TO : The Provincial Commissioner,
South African Police Service
WESTERN CAPE
FROM : The Provincial Commander
Strategic Management
WESTERN CAPE

Compiled by: SAC Hoko

APPLICATION TO CONDUCT RESEARCH WITHIN SAPS: THE ASSESSMENT OF THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE COLLECTION KITS (SAECKs) DNA EVIDENCE IN SUSPECTED CASES OF RAPE: MASTERS DEGREE: UNIVERSITY OF CAPE TOWN: RESEARCHER: MS D CUPIDO

1. A request was received from Ms D Cupido, currently doing her Masters in Biomedical Forensic Science at University of Cape Town (UCT), in the Department of Forensic medicine.
2. The aim of the research is to investigate how DNA evidence from Sexual Assault Evidence Collection Kits (SAECKs) impacts the ruling in rape cases.
3. The applicant's proposal has been perused, evaluated and recommended by Head of Strategic Management, Pretoria.
4. Ms D Cupido has indicated that she will gather the information from the SAPS closed dockets, court documents and available medical examination forms from closed cases from the Cape Town courts between 1st January 2012 and 31st December 2012.
5. The applicant has requested access to Police dockets of stations as per Annexure "A".

APPLICATION TO CONDUCT RESEARCH WITHIN SAPS: THE ASSESSMENT OF THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE COLLECTION KITS (SAECKs) DNA EVIDENCE IN SUSPECTED CASES OF RAPE: MASTERS DEGREE: UNIVERSITY OF CAPE TOWN: RESEARCHER: MS D CUPIDO

RECOMMENDATION

6. This office has perused the application and concurs with the recommendation of the National Office that the application be approved, but subject to the following conditions:

- the researcher will respect the privacy of the members and will not divulge any information received from the officers of the Service and that such information will at all times be treated as strictly confidential;
- the interviews are confined to the conducting said interviews with members at the identified stations;
- the researcher will complete an indemnity form prior to the commencement of her research, in terms of which the SA Police Service is indemnified against any injury, personal damage or any loss suffered during the research;
- If information pertains to the investigation of crime or a criminal case, the researcher must acknowledge that she, by publication thereof, may also be guilty of defeating or obstructing the course of justice or contempt of court;
- the final draft document will be tested with the Divisional Commissioner: Forensic Service to confirm whether the research ethics have been adhered to, prior to the publication of dissertation;
- the researcher will conduct the research without any disruption of the duties of the members of the Service;
- prior arrangements must be made timeously with the Station Commander of such members to be interviewed to ensure that service delivery is not hampered;
- the researcher may not take photographs of any office or state building as that may compromise security of the police station, and is prohibited by law;
- the researcher makes prior arrangements in writing with the office of the Provincial Commissioner in order to conduct the interviews at the mentioned station;
- prior arrangements must be made timeously for conducting the interviews in order to ensure that service delivery is not disrupted.
- the researcher will donate a copy of the research work to the Service.

APPLICATION TO CONDUCT RESEARCH WITHIN SAPS: THE ASSESSMENT OF THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE COLLECTION KITS(SAECKs) DNA EVIDENCE IN SUSPECTED CASES OF RAPE: MASTERS DEGREE: UNIVERSITY OF CAPE TOWN: RESEARCHER: MS D CUPIDO

RECOMMENDED / NOT RECOMMENDED


In terms of paragraph 5.1.1 of this document.


COLONEL
PROVINCIAL COMMANDER: STRATEGIC MANAGEMENT
WESTERN CAPE
ZG DOUSE

DATE 2014/07/24

RECOMMENDED / NOT RECOMMENDED

Relevant National Instruction to be strictly complied with


BRIGADIER
PROVINCIAL COMMANDER: OD AND STRATEGIC MANAGEMENT
WESTERN CAPE
HD HEILBRON

DATE 2014/08/01

APPLICATION TO CONDUCT RESEARCH WITHIN SAPS: THE ASSESSMENT OF
THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE COLLECTION
KITS(SAECKs) DNA EVIDENCE IN SUSPECTED CASES OF RAPE: MASTERS
DEGREE: UNIVERSITY OF CAPE TOWN: RESEARCHER: MS D CUPIDO

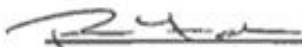
RECOMMENDED / NOT RECOMMENDED 


MAJOR GENERAL
PROVINCIAL HEAD: LEGAL SERVICES
WESTERN CAPE
EN DLADLA

DATE 2014, 08, 07

RECOMMENDED / NOT RECOMMENDED

NO OBJECTION ON CONDITION THAT ALL
PRESCRIPTS / PAR 6 BE OBTAINED TO

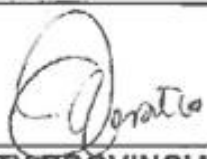

MAJOR GENERAL
DEPUTY PROVINCIAL COMMISSIONER: PHYSICAL RESOURCES MANAGEMENT
WESTERN CAPE
R FICK

DATE 2014/08/08

APPLICATION TO CONDUCT RESEARCH WITHIN SAPS: THE ASSESSMENT OF
THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE COLLECTION
KITS(SAECKs) DNA EVIDENCE IN SUSPECTED CASES OF RAPE: MASTERS
DEGREE: UNIVERSITY OF CAPE TOWN: RESEARCHER: MS D CUPIDO

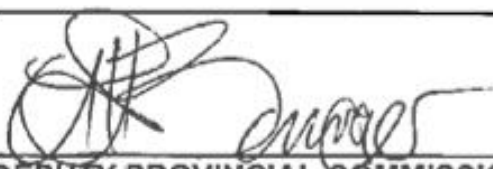
RECOMMENDED / NOT-RECOMMENDED

Recommendations Supported


MAJOR GENERAL
DEPUTY PROVINCIAL COMMISSIONER: OPERATIONAL SERVICES
WESTERN CAPE
SJ JEPHTA

DATE 24/08/14

RECOMMENDED / ~~NOT RECOMMENDED~~


MAJOR GENERAL
DEPUTY PROVINCIAL COMMISSIONER: HUMAN RESOURCE MANAGEMENT
WESTERN CAPE
HS BURGER

DATE 2014/08/15

APPLICATION TO CONDUCT RESEARCH WITHIN SAPS: THE ASSESSMENT OF
THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE COLLECTION
KITS(SAECKs) DNA EVIDENCE IN SUSPECTED CASES OF RAPE: MASTERS
DEGREE: UNIVERSITY OF CAPE TOWN: RESEARCHER: MS D CUPIDO

APPROVED ~~NOT APPROVED~~



LIEUTENANT GENERAL
PROVINCIAL COMMISSIONER: WESTERN CAPE
AH LAMOER

DATE 10/4 / 08 / 19.



UNDERTAKING

RESEARCH PROPOSAL: THE ASSESSMENT OF THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE COLLECTION KITS (SAECKs) DNA EVIDENCE IN SUSPECTED CASES OF RAPE:
MASTERS DEGREE: UNIVERSITY OF CAPE TOWN: RESEARCHER: MS D CUPIDO

I, Danielle Cupido Masters in Biomedical Forensic Science at University of Cape Town (UCT), in the Department of Forensic medicine, hereby confirm that I'm fully aware of the contents of section 70 of the South African Police Act, at 68 of 1995.

NB (The information to be obtained will only be used for academic purpose)

D Cupido
RESEARCHER: MS D CUPIDO
A REGISTERED STUDENT AT
UNIVERSITY OF CAPE TOWN

DATE 25/08/14

[Signature]
Witness (Supervisor/Promoter)

Name Dr. M. HEYNS

Date 25/08/2014




CONDITIONS

RESEARCH PROPOSAL: THE ASSESSMENT OF THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE COLLECTION KITS (SAECKs) DNA EVIDENCE IN SUSPECTED CASES OF RAPE: MASTERS DEGREE: UNIVERSITY OF CAPE TOWN: RESEARCHER: MS D CUPIDO

I, Danielle Cupido, Masters in Biomedical Forensic Science at University of Cape Town (UCT), in the Department of Forensic medicine,

, hereby confirm that, I will conduct the research by interviewing the mentioned members in the South African Police Service, Western Cape, subject to the following conditions, that;

- (1). I will respect the privacy of the members and will not divulge any information received from the members of the Service and that such information will at all times be treated as strictly confidential;
- (2). I will sign an undertaking in regard to the unauthorised disclosure of information;
- (3). I will sign an indemnity, indemnifying the Service against any injuries, loss of life or property or damage property while on the premises of the Police Station;
- (4). I will conduct the research without any costs to the Service;
- (5). I will make the necessary arrangements with members who are to be interviewed;
- (6). I will not let the conducting of the interviews with the senior officers cause any disruption to the duties of the officers of the Service or hamper service delivery;
- (7). I will use my own transport for the purpose of the research;
- (8). I will sign the necessary indemnity if there is a need to travel with state transport to a certain point;
- (9). I will provide my own stationary for the purpose of conducting the interview;
- (10). I will only make tape recordings of the interview with the permission of the officers;
- (11). I will only conduct an interview with the officers and will not collect any documents or information in another format other than that which comes from the interview;
- (12). I will conduct the research alone but will supply the full identification and purpose of any person who might be accompanying me on the day of the visit to the station;
- (13). I will at the completion of the research, donate a copy of the research to the Service


RESEARCHER: MS D CUPIDO
A REGISTERED STUDENT AT
UNIVERSITY OF CAPE TOWN

DATE 25/08/14



INDEMNITY

RESEARCH PROPOSAL: THE ASSESSMENT OF THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE COLLECTION KITS (SAECKs) DNA EVIDENCE IN SUSPECTED CASES OF RAPE:
MASTERS DEGREE: UNIVERSITY OF CAPE TOWN: RESEARCHER: MS D CUPIDO

I, Danielle Cupido Masters in Biomedical Forensic Science at University of Cape Town (UCT), in the Department of Forensic medicine, hereby confirm that, for the purpose of conducting interviews with the officials, I will be accessing the relevant police premises at own risk,

and

I hereby indemnify the service or any member against any claim for bodily injury, loss of life and the loss or damage of property which may occur as a result of me being on the premises for the purpose of conducting the research.

D Cupido
.....
RESEARCHER: MS D CUPIDO
A REGISTERED STUDENT AT
UNIVERSITY OF CAPE TOWN

DATE 25/08/14

[Signature]
.....
Witness (Supervisor/Promoter)

Name Dr. M. HEYNES

Date 25/08/2014



Private Sak / Private Bag X54

Reference Nr Verwysing	3/34/7
Navrae Enquiries	Col J Schnetler W/O MB Chokee
Telefoon Telephone	012-333 3177/3228
Faksnommer Fax number	012-333 3176

**STRATEGIC MANAGEMENT COMPONENT
HEAD OFFICE
PRETORIA**

**The Divisional Commissioner
FORENSIC SERVICES**


(Attention: Col Van Onselen)

RE: RESEARCH REQUEST: THE ASSESSMENT OF THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE COLLECTION KITS (SAECKs) AS DNA EVIDENCE IN SUSPECTED CASES OF RAPE: MASTERS DEGREE, UNIVERSITY OF CAPE TOWN: RESEARCHER: D CUPIDO

1. The research request of D Cupido, pertaining to the above mentioned topic, refers.
2. The aim of the study is to investigate how DNA evidence from SAECKs impacts the ruling in rape cases.
3. The researcher will gather information from the SAPS closed dockets, court documents and available medical examination forms from closed cases from the Cape Town courts between 1st January 2012 and 31st December 2012. Anonymity and confidentiality will be maintained by omitting the names of any victims and suspects in the study.
4. The proposal was perused according to National Instruction 1 of 2006 by this office, it is recommended that permission be granted for the research subject to the final approval and further arrangements by the office of the Divisional Commissioner: Forensic Services, and that an undertaking be obtained from the researcher prior to the commencement of the research that –
 - 4.1 the research will be at his/her exclusive cost;
 - 4.2 he/she will conduct the research without any disruption of the duties of members of the Service and where it is necessary for the research goals, research procedure or research instruments to disrupt the duties of a member, prior arrangements must be made in good time with the commander of such member;
 - 4.3 the researcher should bear in mind that participation in the interviews must be on a voluntary basis;
 - 4.4 the information will at all times be treated as strictly confidential;

- 4.5 if information pertains to the investigation of crime or a criminal case, the researcher must acknowledge that he/she, by publication thereof, may also be guilty of defeating or obstructing the course of justice or contempt of court;
- 4.6 the final draft document will be tested with the Divisional Commissioner: Forensic Service to confirm whether the research ethics have been adhered to, prior to the publication of the dissertation, and
- 4.7 he/she will donate an annotated copy of the research work to the Service.

With kind regards,


MAJOR GENERAL
HEAD, STRATEGIC MANAGEMENT
M MENZIWA

Date: 2014. 06. 13.

Appendix 2: Data Sheets for analysis of police dockets and medical examination forms

Details of the victim:

Police station & CAS no.	Age	Race	Primary caregiver of child	Occupation ,if not a child	When rape occurred?	Where?	What was victim doing?	Use of weapons	Victims response after incident

Details of the Suspect:

Police station & CAS no.	Age	Relationship to victim	Case outcome	Previous convictions	If yes, what convictions

Details from medical-legal forms:

Police station & CAS no.	Was a kit utilised?	Sent to the lab?	Kit number	Is a report available from the lab?	Is a report available at the lab?

Appendix 3: Ethics approval letter



UNIVERSITY OF CAPE TOWN
Faculty of Health Sciences
Human Research Ethics Committee



Room E52-24 Old Main Building
Groote Schuur Hospital
Observatory 7925
Telephone [021] 406 6338 • Facsimile [021] 406 6411
Email: shuretta.thomas@uct.ac.za
Website: www.health.uct.ac.za/research/humanethics/forms

19 December 2013

HREC REF: 712/2013

Dr M Heyns
Forensic Medicine

Dear Dr Heyns

PROJECT TITLE: THE ASSESSMENT OF THE UTILITY AND IMPACT OF SEXUAL ASSAULT EVIDENCE COLLECTION KITS (SAECKS) AS DNA EVIDENCE IN SUSPECTED CASES OF RAPE

Thank you for submitting your study to the Faculty of Health Sciences Human Research Ethics Committee for review.

It is a pleasure to inform you that the HREC has **formally approved** the above-mentioned study.

We acknowledge that the Masters student, Danielle Cupido is also involved in this study.

Approval is granted for one year until the 30th January 2015

Please submit a progress form, using the standardised Annual Report Form if the study continues beyond the approval period. Please submit a Standard Closure form if the study is completed within the approval period.

(Forms can be found on our website: www.health.uct.ac.za/research/humanethics/forms)

Please note that the ongoing ethical conduct of the study remains the responsibility of the principal investigator.

Please quote the HREC reference no in all your correspondence.

Yours sincerely

PP T. Burgess

PROFESSOR M BLOCKMAN
CHAIRPERSON, FHS HUMAN ETHICS

Federal Wide Assurance Number: FWA00001637.

Institutional Review Board (IRB) number: IRB00001938

This serves to confirm that the University of Cape Town Human Research Ethics Committee complies to the Ethics Standards for Clinical Research with a new drug in patients, based on the Medical Research Council (MRC-SA), Food and Drug Administration (FDA-USA), International Convention on Harmonisation Good Clinical Practice (ICH GCP) and Declaration of Helsinki guidelines.

The Human Research Ethics Committee granting this approval is in compliance with the ICH Harmonised Tripartite Guidelines E6: Note for Guidance on Good Clinical Practice (CPMP/ICH/135/95) and FDA Code Federal Regulation Part 50, 56 and 312.

Additional Notes:

1. In some instances the number of cases are 40, this is due to there being an extra victim in a docket with one case number.
2. Sexual assault cases were also investigated along with rape cases.
3. Information was only gather from the charge sheets from Cape Town Regional court and Magistrate court as opposed to looking at 3 courts in total as stated in the proposal.
4. Information was not gathered as to how well the SAECKs was used and how completely they were analysed as the parameters for this is not known.